



**Requirements Imposed on Hospitals, Other Health Care
Institutions, and Health Care Professionals
to Report Disciplinary Actions Against and Allegations
of Misconduct by Certain Health Care Practitioners to
The Virginia Department of Health Professions**

Guidance Document No. 76-34

July 1, 2004

Requirements Imposed on Hospitals, Other Health Care Institutions, and Health Care Professionals to Report Disciplinary Actions Against and Allegations of Misconduct by Certain Health Care Practitioners to The Virginia Department of Health Professions

I. Introduction

On March 20, 2003, Governor Mark R. Warner signed legislation into law that, among other provisions, amended the requirements then imposed on hospitals, other health care institutions, and health care professionals to report to the Department of Health Professions (“DHP”) information concerning disciplinary actions against, misconduct by, and certain disorders of certain health care practitioners.¹ The purpose of the 2003 legislation, referred to generally as “House Bill 1441,” was to enhance the ability of DHP to perform prompt, efficient, and thorough investigations of possible misconduct or impairment of regulated health care practitioners, aided by timely and meaningful reports from sources likely to have knowledge of such individuals’ professional abilities and conduct. To provide guidance regarding House Bill 1441 to health care institutions, health care professionals and the public, the Department of Health Professions promulgated Guidance Document No. 76-34 and published that document on its agency Internet website.

In the 2004 Session of the General Assembly, legislation was enacted that amended several statutes pertaining to the authority of the Department of Health Profession’s health regulatory boards.² Among other provisions, it included several amendments intended to clarify the reporting requirements and to make them more uniformly applicable across the various categories of regulated health care professionals. As a consequence, it became necessary to update and revise certain information included in Guidance Document No. 76-34. Accordingly, that document should be regarded as superceded, and this Guidance Document should be considered as its replacement. This document addresses the requirements, effective July 1, 2004, that impose on hospitals, other health care institutions, and health care professionals a duty to report to the Virginia Department of Health Professions disciplinary actions against and allegations of misconduct by certain health care practitioners.

Without citing to specific sections of the *Code of Virginia*, the reporting requirements are generally as follows:

- The chief executive officer (“CEO”) and the chief of staff (“COS”) of every hospital and other health care institution in the Commonwealth each have a duty, unless prohibited by federal law, to report to the Department of Health Professions the

¹ *Ch. 762, 2003 Virginia Acts of Assembly*. This legislation was introduced as House Bill 1441 by Delegate Winsome E. Sears of Norfolk. It was identical to Senate Bill 1334, which was patroned by Senator William Bolling of Hanover and merged with a similar bill patroned by Senator R. Creigh Deeds of Hot Springs. Senate Bill 1334 also passed and appears at *Ch. 753, 2003 Virginia Acts*.

² *Ch. 64, 2004 Virginia Acts of Assembly*. This legislation was introduced as House Bill 577 by Delegate Phillip A. Hamilton of Newport News.

following information regarding any person subject to regulation by a health regulatory board³:

- (i) any information of which the officer becomes aware in an official capacity, indicating that any person subject to regulation by a health regulatory board is in need of or has been admitted as a patient for treatment of substance abuse or a psychiatric illness;
 - (ii) any information of which the official becomes similarly aware, indicating that any person licensed by a health regulatory board may have engaged in “unethical, fraudulent or unprofessional conduct;”
 - (iii) any disciplinary action initiated or taken by the institution as a result of intentional or negligent conduct that causes or is likely to cause injury to a patient; a breach of professional ethics; professional incompetence; moral turpitude; or substance abuse; and
 - (iv) any voluntary resignation from staff of a health professional while such professional is under investigation or the subject of disciplinary proceedings.
- Va. Code § 54.1-2400.6.*

The required reports are to be made in writing to the Director of DHP within a specified 30-day period (one exception is that a report concerning the commitment or admission of a health care professional as a patient shall be made within 5 days of such information becoming known to the officer). Each report shall describe fully the circumstances giving rise to the report, identify persons with knowledge of the relevant facts, and include relevant medical records. Institutions shall not be required, however, to submit “proceedings, minutes, records or reports that are

³ Persons subject to being reported under § 54.1-2400.6 are (i) those licensed, certified or registered by a health regulatory board, (ii) any applicant for such licensure, certification or registration, and (iii) those holding a multistate license privilege to practice nursing. Those practitioners include:

Board of Audiology/Speech Language Pathology: Audiologists; Speech-language pathologists

Board of Counseling: Marriage and family therapists; Professional counselors; Licensed substance abuse treatment practitioners; Certified rehabilitation providers; certified substance abuse counselors; Certified substance abuse counseling assistants

Board of Dentistry: Dentists; Oral and maxillofacial surgeons; Dental hygienists

Board of Funeral Directors and Embalmers: Funeral service providers; Funeral directors; Funeral embalmers; funeral trainees

Board of Medicine: Doctors of medicine, including interns and residents; Doctors of osteopathic medicine; Chiropractors; Podiatrists; Physician assistants; Radiologic technologists; Radiologic technologists, limited; Respiratory care providers; Occupational therapists; Acupuncturists; Licensed athletic trainers

Board of Nursing: Registered nurses; Licensed practical nurses; Nurse practitioners; Clinical nurse specialists; Certified massage therapists; certified nurse aides

Board of Nursing Home Administrators: Nursing home administrators

Board of Optometry: Optometrists

Board of Pharmacy: Pharmacists; Pharmacist interns; Pharmacy technicians

Board of Physical Therapy: Physical therapists; Physical therapist assistants

Board of Psychology: Applied psychologists; Clinical psychologists; School psychologists; Certified sex offender treatment providers

Board of Social Work: Clinical social workers; Social workers

Board of Veterinary Medicine: Veterinarians; Veterinary technicians

privileged under § 8.01-581.17,” which pertains to peer review proceedings. Any person who fails to make a report as required by § 54.1-2400.6 shall be subject to a civil penalty of up to \$25,000, as determined by the Director of DHP.

- The presidents of the Medical Society of Virginia, the Osteopathic Medical Association, the Virginia Chiropractors Association, and the Virginia Podiatric Medical Association, as well as the presidents of “any [other] association, society, academy or organization,” are required to report to the Board of Medicine, within 30 days, any disciplinary actions taken against any member of the respective organization who is licensed by the Board of Medicine, if such disciplinary action results from conduct involving intentional or negligent conduct that causes or is likely to cause injury to a patient, a breach of professional ethics, professional incompetence, moral turpitude, drug addiction or alcohol abuse. Any president who fails to make a report as required shall be subject to a civil penalty of up to \$5,000. *Va. Code § 54.1-2908.*
- Further, (i) all persons licensed by the Board of Medicine under Chapter 29 of Title 54.1 of the *Code of Virginia*;⁴ (ii) the presidents of all professional organizations whose members are licensed by the Board of Medicine; (iii) all health care institutions licensed by the Commonwealth; (iv) the “malpractice insurance carrier of any person who is the subject of a judgment or settlement,” and (v) all health maintenance organizations licensed by the Commonwealth shall report to the Board of Medicine, within 30 days of occurrence, the following:
 - (1) disciplinary action taken against any person licensed under Chapter 29 of Title 54.1, in another state or federal health institution or a voluntary surrender of license in another state while under investigation;
 - (2) any malpractice judgment or settlement of a malpractice claim against such a practitioner; or
 - (3) any evidence that indicates a reasonable probability that such a practitioner:
 - (a) may be professionally incompetent,
 - (b) has engaged in intentional or negligent conduct that causes or is likely to cause injury to a patient;
 - (c) has engaged in unprofessional conduct; or
 - (d) may be mentally or physically unable to practice safely.Any person who fails to make such a required report shall be subject to a civil penalty of up to \$5,000. *Va. Code § 54.1-2909.*
- Any person who makes a report in good faith regarding the conduct or competence of a health care practitioner as required by law or regulation, or provides information in connection with an investigation or judicial or administrative proceeding, shall be immune from any civil liability resulting therefrom.

⁴ Persons licensed under Chapter 29 of Title 54.1 of the *Code of Virginia* are both obligated to report and may be the subjects of reports under Va. Code § 54.1-2909. Such persons are: doctors of medicine; doctors of osteopathic medicine; chiropractors; podiatrists; physician assistants; occupational therapists; radiologic technologists; radiologic technologists, limited; respiratory care providers; acupuncturists; athletic trainers; and nurse practitioners.

II. Specific Provisions of Virginia Law Relating to Reporting and Penalties

Beginning July 1, 2004, the key statutes that set forth the requirements to report misconduct and incompetence of health care practitioners are as follows:

A. Reporting Statutes

§ 54.1-2400.6. Hospitals and other health care institutions required to report disciplinary actions against and certain disorders of health professionals; immunity from liability; failure to report.⁵

A. The chief executive officer and the chief of staff of every hospital or other health care institution in the Commonwealth shall report within 30 days, except as provided in subsection B, to the Director of the Department of Health Professions the following information regarding any person (i) licensed, certified, or registered by a health regulatory board or (ii) holding a multistate licensure privilege to practice nursing or an applicant for licensure, certification or registration unless exempted under subsection E:

1. Any information of which he may become aware in his official capacity indicating that such a health professional is in need of treatment or has been committed or admitted as a patient, either at his institution or any other health care institution, for treatment of substance abuse or a psychiatric illness that may render the health professional a danger to himself, the public or his patients.

2. Any information of which he may become aware in his official capacity indicating, after reasonable investigation and consultation as needed with the appropriate internal boards or committees authorized to impose disciplinary action on a health professional, that there is a reasonable probability that such health professional may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations. The report required under this section shall be submitted within 30 days of the date that the chief executive officer or chief of staff determines that a reasonable probability exists.

3. Any disciplinary proceeding begun by the institution as a result of conduct involving (i) intentional or negligent conduct that causes or is likely to cause injury to a

⁵ This section, prior to being amended by House Bill 577 (2004), was codified as § 54.1-2906. Although the provisions were located in Chapter 29 of Title 54.1 of the *Code of Virginia*, which generally concerns the regulation of practitioners of Medicine and Other Healing Arts, the section required that reports be made about persons *licensed by any of DHP's health regulatory boards*. To clarify the applicability of the reporting requirements, the section has been relocated by House Bill 577 to the general provisions of Chapter 24. Beginning July 1, 2004, the relocated section requires, among other provisions, reports regarding “*any person (i) licensed, certified, or registered by a health regulatory board or (ii) holding a multistate licensure privilege to practice nursing or [(iii)]an applicant for licensure, certification or registration*” unless exempted by federal law. Under enumerated item (ii) (*i.e.*, “holding a multistate licensure privilege to practice nursing”), the provision would require a report to be made regarding a person authorized to practice nursing in the Commonwealth, beginning January 1, 2005, pursuant to Va. Code § 54.1-3030, *et seq.*, the Nurse Licensure Compact. This statute appears in italics because it was newly created as a section of Chapter 24 by House Bill 577 (2004).

patient or patients, (ii) professional ethics, (iii) professional incompetence, (iv) moral turpitude, or (v) substance abuse. The report required under this section shall be submitted within 30 days of the date of written communication to the health professional notifying him of the initiation of a disciplinary proceeding.

4. Any disciplinary action taken during or at the conclusion of disciplinary proceedings or while under investigation, including but not limited to denial or termination of employment, denial or termination of privileges or restriction of privileges that results from conduct involving (i) intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, (ii) professional ethics, (iii) professional incompetence, (iv) moral turpitude, or (v) substance abuse. The report required under this section shall be submitted within 30 days of the date of written communication to the health professional notifying him of any disciplinary action.

5. The voluntary resignation from the staff of the health care institution or voluntary restriction or expiration of privileges at the institution of any health professional while such health professional is under investigation or is the subject of disciplinary proceedings taken or begun by the institution or a committee thereof for any reason related to possible intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, medical incompetence, unprofessional conduct, moral turpitude, mental or physical impairment, or substance abuse.

Any report required by this section shall be in writing directed to the Director of the Department of Health Professions, shall give the name and address of the person who is the subject of the report and shall fully describe the circumstances surrounding the facts required to be reported. The report shall include the names and contact information of individuals with knowledge about the facts required to be reported and the names and contact information of individuals from whom the hospital or health care institution sought information to substantiate the facts required to be reported. All relevant medical records shall be attached to the report if patient care or the health professional's health status is at issue. The reporting hospital or health care institution shall also provide notice to the Department that it has submitted a report to the National Practitioner Data Bank under the Health Care Quality Improvement Act (42 U.S.C. § 11101 et seq.). The reporting hospital or health care institution shall give the health professional who is the subject of the report an opportunity to review the report. The health professional may submit a separate report if he disagrees with the substance of the report.

This section shall not be construed to require the hospital or health care institution to submit any proceedings, minutes, records or reports that are privileged under § [8.01-581.17](#), except that the provisions of § [8.01-581.17](#) shall not bar (i) any report required by this section or (ii) any requested medical records that are necessary to investigate unprofessional conduct reported pursuant to this subtitle or unprofessional conduct that should have been reported pursuant to this subtitle. Under no circumstances shall compliance with this section be construed to waive or limit the privilege provided in § [8.01-581.17](#). No person or entity shall be obligated to report any matter to the

Department if the person or entity has actual notice that the same matter has already been reported to the Department.

B. Any report required by this section concerning the commitment or admission of such health professional as a patient shall be made within five days of when the chief administrative officer learns of such commitment or admission.

C. The State Health Commissioner or the Commissioner of the Department of Social Services shall report to the Department any information of which their agencies may become aware in the course of their duties that a health professional may be guilty of fraudulent, unethical or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

D. Any person making a report by this section, providing information pursuant to an investigation or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

E. Medical records or information learned or maintained in connection with an alcohol or drug prevention function that is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall be exempt from the reporting requirements of this section to the extent that such reporting is in violation of 42 U.S.C. § 290dd-2 or regulations adopted thereunder.

F. Any person who fails to make a report to the Department as required by this section shall be subject to a civil penalty not to exceed \$25,000 assessed by the Director. The Director shall report the assessment of such civil penalty to the Commissioner of the Department of Health. Any person assessed a civil penalty pursuant to this section shall not receive a license or certification or renewal of such unless such penalty has been paid pursuant to § [32.1-125.01](#). The Medical College of Virginia Hospitals and the University of Virginia Hospitals shall not receive certification pursuant to § [32.1-137](#) or Article 1.1 (§ [32.1-102.1](#) et seq.) of Chapter 4 of Title 32.1 unless such penalty has been paid.

§ [54.1-2400.7](#). Practitioners treating other practitioners for certain disorders to make reports; immunity from liability.⁶

⁶ This section, prior to being amended by House Bill 577 (2004), was codified as § 54.1-2907. Although the section was located in Chapter 29 of Title 54.1, which pertains to the regulation of practitioners of Medicine and Other Healing Arts, it required that treating practitioners licensed or certified “by [any] health regulatory board” make reports about persons they treated who were licensed or certified “by [any] health regulatory board.” To clarify its applicability, the section has been relocated to the general provisions of Chapter 24. It also now requires, among other provisions, reports by and regarding persons “persons who [hold] a multistate license privilege to practice nursing.” Beginning, July 1, 2004, reports are to be made to the Director of the Department of Health Professions. This statute appears in italics because it was newly created as a section of Chapter 24 by House Bill 577 (2004).

A. Every practitioner in the Commonwealth who is licensed or certified by a health regulatory board or who holds a multistate licensure privilege to practice nursing who treats professionally any person licensed or certified by a health regulatory board or who holds a multistate licensure privilege shall report, unless exempted by subsection C hereof, to the Director of the Department of Health Professions whenever any such health professional is treated for mental disorders, chemical dependency or alcoholism, unless the attending practitioner has determined that there is a reasonable probability that the person being treated is competent to continue in practice or would not constitute danger to himself or to the health and welfare of his patients or the public.

B. Any person making a report required by this section or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

C. Medical records or information learned or maintained in connection with an alcohol or drug abuse prevention function that is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall be exempt from the reporting requirements of this section to the extent that such reporting is in violation of 42 U.S.C. § 290dd-2 or regulations adopted thereunder.

§ 54.1-2400.8. Immunity for reporting.⁷

In addition to the immunity for reporting as provided by §§ 54.1-2400.6 and 54.1-2400.7, any person making a report regarding the conduct or competency of a health care practitioner as required by law or regulation or providing information pursuant to an investigation or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability resulting therefrom unless such person acted in bad faith or with malicious intent.

§ 54.1-2908. Reports of disciplinary action against health professionals; immunity from liability.⁸

*A. The president of the Medical Society of Virginia, the Osteopathic Medical Association, the Virginia Chiropractors Association, Inc., and the Virginia Podiatric Medical Association shall report *within 30 days* to the Board of Medicine any disciplinary action taken by his organization against any member of his organization licensed under this chapter if such disciplinary action is a result of conduct involving *intentional or negligent conduct that causes or is likely to cause injury to a patient or**

⁷ This section was added to the general provisions of Chapter 24 of Title 54.1 by House Bill 577. It allows immunity from civil liability to be conferred upon *any person* who makes a report in good faith about a practitioner as required by law or who provides information in connection with an investigation or proceeding as a result of such report. This statute appears in italics because it was newly created as a section of Chapter 24 by House Bill 577 (2004).

⁸ Va. Code § 54.1-2908 was amended by House Bill 1441 (2003), which became effective on July 1, 2003. The text that appears in italics represents the language added by that legislation.

patients, professional ethics, professional incompetence, moral turpitude, drug addiction or alcohol abuse.

B. The president of any association, society, academy or organization shall report *within 30 days* to the Board of Medicine any disciplinary action taken against any of its members licensed under this chapter if such disciplinary action is a result of conduct involving *intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, professional ethics, professional incompetence, moral turpitude, drug addiction or alcohol abuse.*

C. Any report required by this section shall be in writing directed to the Board of Medicine, shall give the name and address of the person who is the subject of the report and shall fully describe the circumstances surrounding the facts required to be reported. *The report shall include the names and contact information of individuals with knowledge about the facts required to be reported and the names and contact information of all individuals from whom the association, society, academy, or organization sought information to substantiate the facts required to be reported. All relevant medical records maintained by the reporting entity shall be attached to the report if patient care or the health professional's health status is at issue. The reporting association, society, academy or organization shall also provide notice to the Board that it has submitted any required report to the National Practitioner Data Bank under the Health Care Quality Improvement Act, 42 U.S.C. § 11101 et seq.*

The reporting association, society, academy or organization shall give the health professional who is the subject of the report an opportunity to review the report. The health professional may submit a separate report if he disagrees with the substance of the report.

D. *No person or entity shall be obligated to report any matter to the Board if the person or entity has actual notice that the matter has already been reported to the Board.*

E. Any person making a report required by this section, *providing information pursuant to an investigation* or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability resulting therefrom unless such person acted in bad faith or with malicious intent.

F. In the event that any organization enumerated in subsection A or any component thereof receives a complaint against one of its members, such organization may, in lieu of considering disciplinary action against such member, request that the Board investigate the matter pursuant to this chapter, in which event any person participating in the decision to make such a request or testifying in a judicial or administrative proceeding as a result of such request shall be immune from any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

G. *Any person who fails to make a report to the Board as required by this section shall be subject to a civil penalty not to exceed \$5,000. Any person assessed a civil*

penalty pursuant to this section shall not receive a license, registration or certification or renewal of such from any health regulatory board unless such penalty has been paid.

§ 54.1-2909. Further reporting requirements.⁹

A. The following matters shall be reported *within 30 days of their occurrence* to the Board:

1. Any disciplinary action taken against a person licensed under this chapter in another state or in a federal health institution or voluntary surrender of a license in another state while under investigation;
2. Any malpractice judgment against a person licensed under this chapter;
3. Any ~~incident of two settlements~~ *settlement of a malpractice claim* ~~claims~~ *claim* against ~~one~~ a person licensed under this chapter ~~within a three-year period~~; and
4. Any evidence that indicates a reasonable probability that a person licensed under this chapter is or may be professionally incompetent, ~~guilty of~~ *has engaged in intentional or negligent conduct that causes or it likely to cause injury to a patient or patients; has engaged in unprofessional conduct; or may be mentally or physically unable to engage safely in the practice of his profession.*

The reporting requirements set forth in this section shall be met if these matters are reported to the National Practitioner Data Bank under the Health Care Quality Improvement Act, 42 U.S.C. § 11101 et seq., and notice that such a report has been submitted is provided to the Board.

B. The following persons and entities are subject to the reporting requirements set forth in this section:

1. Any person licensed under this chapter who is the subject of a disciplinary action, settlement, judgment or evidence for which reporting is required pursuant to this section;
2. Any other person licensed under this chapter, except as provided in the protocol agreement entered into by the Medical Society of Virginia and the Board for the Operation of the Impaired Physicians Program;
3. The presidents of all professional societies in the Commonwealth, and their component societies whose members are regulated by the Board, except as provided for in the protocol agreement entered into by the Medical Society of Virginia and the Board for the Operation of the Impaired Physicians Program;

⁹ Va. Code § 54.1-2909 was amended by House Bill 1441 (2003), which became effective on July 1, 2003. The text that appears in italics represents the language added by that legislation. The text that is overstricken represents the language that was deleted from the section.

4. All health care institutions licensed by the Commonwealth;
 5. The malpractice insurance carrier of any person who is the subject of a judgment or ~~of two settlements within a three year period. The carrier shall not be required to report any settlements except those in which it has participated which have resulted in at least two settlements on behalf of one person during a three year period~~ *settlement*; and
 6. Any health maintenance organization licensed by the Commonwealth.
- C. No person or entity shall be obligated to report any matter to the Board if the person or entity has actual notice that the matter has already been reported to the Board.
- D. Any report required by this section shall be in writing directed to the Board, shall give the name and address of the person who is the subject of the report and shall describe the circumstances surrounding the facts required to be reported. *Under no circumstances shall compliance with this section be construed to waive or limit the privilege provided in § [8.01-581.17](#).*
- E. Any person making a report required by this section, *providing information pursuant to an investigation* or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability or criminal prosecution resulting therefrom unless such person acted in bad faith or with malicious intent.
- F. The clerk of any circuit court or any district court in the Commonwealth shall report to the Board the conviction of any person known by such clerk to be licensed under this chapter of any (i) misdemeanor involving a controlled substance, marijuana or substance abuse or involving an act of moral turpitude or (ii) felony.
- G. Any person who fails to make a report to the Board as required by this section shall be subject to a civil penalty not to exceed \$5,000. The Director shall report the assessment of such civil penalty to the Commissioner of the Department of Health or the Commissioner of Insurance at the State Corporation Commission. Any person assessed a civil penalty pursuant to this section shall not receive a license, registration or certification or renewal of such unless such penalty has been paid.*
- H. Disciplinary action against any person licensed, registered or certified under this chapter shall be based upon the underlying conduct of the person and not upon the report of a settlement or judgment submitted under this section.*

B. Penalty Provisions Relating to the Reporting Laws

§ 32.1-125.01. Failing to report; penalty.¹⁰

Any hospital or nursing home that has not paid civil penalties assessed for failing to report pursuant to § ~~54.1-2906~~ 54.1-2400.6 shall not be issued a license or certification or a renewal of such.

§ 54.1-111. Unlawful acts; prosecution; proceedings in equity; civil penalty.¹¹

A. It shall be unlawful for any person, partnership, corporation or other entity to engage in any of the following acts:

• • •

7. Willfully refusing to furnish a regulatory board information or records required or requested pursuant to statute or regulation.

• • •

Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a Class 1 misdemeanor. The third or any subsequent conviction for violating this section during a ~~thirty-six~~ 36-month period shall constitute a Class 6 felony.

B. In addition to the criminal penalties provided for in subsection A, the Department of Professional and Occupational Regulation or the Department of Health Professions, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of subsection A and may institute proceedings in equity to enjoin any person, partnership, corporation or any other entity from engaging in any unlawful act enumerated in this section and to recover a civil penalty of at least \$200 but not more than ~~\$1,000~~ 5,000 per violation, with each unlawful act constituting a separate violation; but in no event shall the civil penalties against any one person, partnership, corporation or other entity exceed ~~\$10,000~~ 25,000 per year. Such proceedings shall be brought in the name of the Commonwealth by the appropriate Department in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

¹⁰ Va. Code § 32.1-125.01 was added to the laws relating to health care institutions by House Bill 1441 (2003) and became effective July 1, 2003. It was further amended by House Bill 577 (2004) to revise the reference to the recodified reporting section, § 54.1-2400.6.

¹¹ Va. Code § 54.1-111 was amended by House Bill 1441 (2003), which became effective on July 1, 2003. The text that appears in italics represents the language added by that legislation. The text that is overstricken represents the language that was deleted from the section. Only the relevant penalty language of this section is set out above.

§ 54.1-2505. Powers and duties of Director of Department.¹²

The Director of the Department shall have the following powers and duties:

• • •

21. To assess a civil penalty against any person who is not licensed by a health regulatory board for failing to report a violation pursuant to § ~~54.1-2906~~ 54.1-2400.6 or § 54.1-2909.

III. Specific Directions and Guidance Concerning Certain Required Reports

A. When are hospitals, other health care institutions, and health care professionals required to make a report, under Va. Code §§ 54.1-2400.6 and 54.1-2909, concerning a practitioner who is regulated by a health regulatory board?

1. For the purpose of reporting requirements, “**hospital or other health care institution**” should be taken to mean:

- general hospitals;
- outpatient surgical hospitals;
- mental or psychiatric hospitals, including, for the purposes of § 54.1-2400.6, every facility and training center operated by the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS);¹³
- hospitals operated by the University of Virginia and Virginia Commonwealth University;
- hospitals known by varying nomenclature or designation such as sanatoriums, sanitariums, acute, rehabilitation, chronic disease, short-term, long-term, and inpatient or outpatient maternity hospitals; and
- nursing homes and certified nursing facilities.

¹² Va. Code § 54.1-2505 was amended by House Bill 1441 (2003) to allow the Director of DHP to assess a civil penalty against a health care institution and others not licensed by a health regulatory board who fail to report as required. That provision became effective July 1, 2003. The section was further amended by House Bill 577 (2004) to revise the reference to the recodified reporting section, § 54.1-2400.6.

¹³ By contrast, §54.1-2909(B) requires matters to be reported by "2. any other person licensed under [Chapter 29, Medicine and Other Healing Arts] and "4. all health care institutions licensed by the Commonwealth." (Emphasis added) The facilities operated by DMHMRSAS are not licensed by the Commonwealth and, therefore, are not required to report the information required in §54.1-2909. The reporting requirements of § 54.1-2909 would, however, apply to persons employed by DMHMRSAS facilities who are licensed by the Board of Medicine. Because all of the DMHMRSAS facilities have medical directors licensed by the Board of Medicine, reports under § 54.1-2909 would also be required of those individuals.

For these purposes, physician offices and group medical practices are not intended to be included in the terms, “hospital and other health care institution.”

2. Under Va. Code § 54.1-2400.6, reports are to be made regarding **practitioners subject to regulation by any of the health regulatory boards**, specifically:

- any person licensed, certified, or registered by a health regulatory board,
- any applicant for licensure, certification or registration, and
- any person holding a multistate licensure privilege to practice nursing under the interstate Nurse Licensure Compact, effective January 1, 2005.

a. When the **chief executive officer (CEO) or chief of staff (COS)** of such a hospital or other health care institution, **in his official capacity**, becomes aware that a practitioner regulated by any health regulatory board is **in need of treatment for substance abuse, or a psychiatric illness that may render such health professional a danger to himself, the public or his patients**, the CEO or COS must report such information to the Director of DHP **within 30 calendar days**, unless prohibited under federal law. *Va. Code § 54.1-2400.6.A.* Information learned about a practitioner in connection with an alcohol or drug prevention program receiving federal assistance is exempt from this reporting requirement to the extent such reporting would violate 42 U.S.C. § 290dd-2, or regulations promulgated thereunder. *Va. Code §54.1-2400.6.E.*

Information of which a CEO or COS becomes aware “**in his official capacity**” should be taken to mean **any information imparted to or received by the CEO or COS while he is engaged in his official duties or by virtue of his position**. For example, if information about an impaired practitioner is provided to a COS while on duty at work or, if not while on duty at work but, rather, because the COS holds a management role at his/her respective institution, the COS will have a duty to report. Furthermore, if a CEO observes or receives credible information while attending a social event that causes him to conclude that a practitioner on his institution’s staff is in need of treatment for substance abuse, the CEO has a duty to report that information, regardless of where he was when it came to his attention, because of his general supervisory responsibility over his staff.

b. In addition, when a CEO or COS, in his official capacity, becomes aware that a practitioner regulated by any health regulatory board **has been committed or admitted as a patient for the treatment of substance abuse or a psychiatric illness that may render such health professional a danger to himself, the public or his patients**, the CEO or COS must report such information to the Director of DHP **within 5 calendar days**, unless prohibited under federal law. *Va. Code §§ 54.1-2400.6.A.1 and 54.1-2400.6.B.* This requirement applies regardless of whether the CEO or COS is aware that the professional is participating in the Health Practitioners’ Intervention Program, pursuant to Va. Code § 54.1-2515 *et seq.* To the extent that Federal law, under 42 USC § 290dd-2, requires treating providers and facilities to maintain confidentially the identity

and records of persons receiving treatment for substance abuse, this reporting requirement does not apply. *Va. Code § 54.1-2400.6.E.*

c. When a CEO or COS becomes aware in his official capacity of any information indicating that there is a **reasonable probability** that a practitioner regulated by any health regulatory board **may have engaged in unethical, fraudulent or unprofessional conduct, as defined in the relevant licensing statutes and regulations**, the CEO or COS must report such information to the Director of DHP **within 30 days of the date he determines that such reasonable probability exists**. The statute contemplates that in some cases, a **“reasonable investigation and consultation . . . with appropriate internal disciplinary boards or committees authorized to impose disciplinary action”** may be needed to ascertain existence of such “reasonable probability.” *Va. Code § 54.1-2400.6.A.2.*

For the purpose of reporting health professional misconduct, a **“reasonable probability”** should be taken to mean **a likelihood greater than a mere possibility**. The statute does not presume, nor does it entitle, an institution to undertake an extensive or protracted investigation in each instance to determine whether a “reasonable probability” exists that a health professional engaged in misconduct. In many cases, the CEO or COS will obtain information of sufficient credibility such that no internal “investigation” or additional “consultation” will be required. In other cases and in certain institutions, the CEO or COS may be justified in utilizing the institution’s peer review process to establish that there is a reasonable probability to conclude that a practitioner may have engaged in misconduct. In such instances, if the peer review committee concludes it is warranted to proceed, then the CEO or COS will have cause to report the reasonable probability of misconduct to DHP even before any proceedings are conducted by the hospital.

Because the overarching and undisputed purpose of the reporting requirements enacted into law in 2003 and 2004 is to ensure that regulatory boards receive timely reports of practitioner misconduct, **a CEO or COS should endeavor to make any report required under Va. Code § 54.1-2400.6 A.2 as promptly as possible – and under all circumstances, no later than 30 days after initially determining that there is more than a mere possibility that a practitioner engaged in reportable misconduct. Any internal investigation or consultation that may be needed to establish such “reasonable probability” should be undertaken immediately and should not unduly delay submission of a required report.** To underscore this point, it is useful to reflect on the fact that subsection D of § 54.1-2400.6 confers immunity from civil liability for any person who makes a report of misconduct in good faith, while subsection F provides for a **civil penalty of up to \$25,000 for a failure to report as required.**

d. When **any disciplinary proceeding is begun** by a hospital or other healthcare institution against a practitioner regulated by any health regulatory board **as a**

result of conduct involving intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, a breach of professional ethics, professional incompetence, moral turpitude, or substance abuse, the CEO or COS of such institution shall report the fact of such disciplinary action to the Director of DHP **within 30 days of the date of written communication to the practitioner** notifying him of the disciplinary proceeding. *Va. Code § 54.1-2400.6.A.3.*

e. When **any disciplinary action is taken** by a hospital or other healthcare institution against a practitioner regulated by any health regulatory board **during or after disciplinary proceedings, or during an investigation, as a result of conduct involving intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, a breach of professional ethics, professional incompetence, moral turpitude, or substance abuse**, the CEO or COS of such institution shall report the fact of such disciplinary action to the Director of DHP **within 30 days of the date of written communication to the practitioner** notifying him of the disciplinary action. *Va. Code § 54.1-2400.6.A.4.*

f. When any **health professional voluntarily resigns from the staff of a hospital or other health care institution, or accepts a voluntary restriction or expiration of privileges at the institution, while such health professional is under investigation or is the subject of disciplinary proceedings** taken or begun by the institution for any reason related to possible intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, medical incompetence, unprofessional conduct, moral turpitude, mental or physical impairment, or substance abuse, the CEO or COS of the institution shall **report such resignation, restriction or expiration of privileges to the Director of DHP within 30 calendar days of its effective date.** *Va. Code § 54.1-2400.6.A.*

3. Persons and entities subject to reporting requirements as specified in Va. Code § 54.1-2909.B (generally, licensees of the Board of Medicine, presidents of all professional societies whose members are licensed by the Board of Medicine, all health care institutions licensed by the Commonwealth of Virginia, all malpractice carriers of persons licensed by the Board of Medicine who are subject to a malpractice judgment or settlement, and all health maintenance organizations licensed by the Commonwealth) **shall report the following matters to the Board of Medicine within 30 calendar days of the date such matter occurred:**

- a. **disciplinary action taken against any person licensed by the Board of Medicine (including oneself, if required by this statute to report), in another state or federal health institution or a voluntary surrender of license in another state while under investigation;**
- b. **any malpractice judgment or settlement** of a malpractice claim against such a practitioner; or

- c. any evidence that indicates a reasonable probability that such a practitioner is or may be professionally incompetent; has engaged in intentional or negligent conduct that causes or is likely to cause injury to a patient; has engaged in unprofessional conduct; or may be mentally or physically unable to practice safely.

Such reporting requirements, however, shall be met if the matters are reported to the National Practitioner Data Bank under the Health Care Quality Improvement Act, 42 U.S.C. § 11101 et seq., and notice that such a report has been submitted is provided to the Board. *Va. Code § 54.1-2909.A.*

4. No person shall be required to make a report of any matter pursuant to Va. Code §§ 54.1-2400.6 or 54.1-2909 if such person has actual notice that the same matter has already been properly reported to DHP. It is strongly recommended, however, that such “actual notice” amount to personal, first-hand knowledge, such as possessing a copy of the written report to DHP, or having been contacted by an investigator or other DHP staff about the matter following DHP’s receipt of a report from a third party. *Va. Code §§ 54.1-2400.6.A and 54.1-2909.C.*

B. What information are hospitals, other health care institutions, and health care professionals required to include in their reports?

1. Reports required pursuant to Va. Code § 54.1-2400.6 (see paragraphs III.A.3 through III.A.8 above), shall be **in writing**, directed **to the Director of DHP** and shall include:
 - a. the name and address of the person who is the subject of the report;
 - b. a full description of the circumstances required to be reported;
 - c. names and contact information of individuals with knowledge about the facts required to be reported;
 - d. names and contact information of individuals from whom the hospital or health care institution sought information to substantiate the facts required to be reported;
 - e. all relevant medical records if patient care or the health professional's health status is at issue; and
 - f. if relevant, notice to the Board that it has submitted a report to the National Practitioner Data Bank under the Health Care Quality Improvement Act, 42 U.S.C. § 11101, *et seq.*

Hospitals and other health care institutions shall not be required to submit any “proceedings, minutes, records, or reports” that are privileged under Va. Code § 8.01-581.17. The provisions of that section shall not, however, bar the making of a report as required by § 54.1-2400.6, nor the production of any requested medical records necessary to investigate unprofessional conduct by any licensed health practitioner.

2. Reports required pursuant to Va. Code § 54.1-2909 shall be **in writing**, directed to the **Board of Medicine** and shall include:

- a. the name and address of the person who is the subject of the report, and
- b. a description of the circumstances surrounding the facts reported.

3. Reports in writing to the Director of DHP should be addressed to Robert A. Nebiker, Director, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712. Reports to the Board of Medicine should be addressed to William L. Harp, M.D., Executive Director, Virginia Board of Medicine, at the same street address. Although not required by law, it is **advisable that all such written reports and enclosures should be sent by a means that provides the sender a confirmation of delivery**, *e.g.*, Federal Express, UPS, U.S. Postal Service certified mail with return receipt, *etc.*

IV. Board-Specific Guidance Regarding Reportable Actions and Conduct

The following Appendices, designated A through M, present information pertinent to reporting the actions and conduct of health care practitioners licensed, registered, or certified by various health regulatory boards. The information includes the statutes and regulations that constitute the grounds for disciplinary action by each board, the provisions of law that are most often cited as a basis for board action, and examples of both reportable and non-reportable conduct. All laws and regulations applicable to the various health regulatory boards and to the practitioners regulated by each board may be found on the DHP website: http://www.dhp.state.va.us/dhp_laws/default.htm .

The information provided with regard to each board is intended simply as a guide for hospitals, other health care institutions, and practitioners that are required by law to make reports to the Department of Health Professions and the Board of Medicine. It is not possible to anticipate and address every scenario that could occur and every type of report that a CEO, COS, or other practitioner could be obligated to make. Each institution and each practitioner may, and indeed should, seek the advice of counsel if in doubt about an obligation to report information.

APPENDIX A

Board of Audiology and Speech-Language Pathology

A. Statutory and Regulatory Bases for Disciplinary Actions

Va. Code § 54.1-2600 -- Definitions

Va. Code § 54.1-2603 – License required

18 VAC 30-20-230 -- Prohibited conduct

18 VAC 30-20-240 -- Supervisory responsibilities; supervision of unlicensed assistants

18 VAC 30-20-280 – Unprofessional conduct

18 VAC 30-20-300 – Continued competency requirements for renewal of active license

B. Provisions of Law Most Commonly Cited as Bases for Board Action

§ 54.1-2603. License required.

A. In order to practice audiology or speech pathology, it shall be necessary to hold a valid license.

* * *

Persons holding such licenses as school speech-language pathologists, without examination, shall practice solely in public school divisions; holding a license as a school speech-language pathologist pursuant to this section shall not authorize such persons to practice outside the school setting or in any setting other than the public schools of the Commonwealth, unless such individuals are licensed by the Board of Audiology and Speech-Language Pathology to offer to the public the services defined in § 54.1-2600.

The Board shall issue persons, holding dual licenses from the Board of Education with an endorsement in speech-language pathology and from the Board of Audiology and Speech-Language Pathology as school speech-language pathologists, a license which notes the limitations on practice set forth in this subsection.

18 VAC 30-20-230. Prohibited conduct.

A. No person unless otherwise licensed to do so, shall prepare, order, dispense, alter or repair hearing aids or parts of or attachments to hearing aids for consideration. However, audiologists licensed under this chapter may make earmold impressions and prepare and alter earmolds for clinical use and research.

B. No person licensed as school speech-language pathologist shall conduct the practice of speech-language pathology outside the scope of the public school setting.

18 VAC 30-20-240. Supervisory responsibilities; supervision of unlicensed assistants.

A. A licensed audiologist and speech-language pathologist shall provide supervision to unlicensed assistants, shall be held fully responsible for their performance and activities, and shall ensure that they perform only those activities which do not constitute the practice of audiology or speech-language pathology and which are commensurate with their level of training.

18 VAC 30-20-280. Unprofessional conduct.

The board may refuse to issue a license to any applicant, suspend a license for a stated period of time or indefinitely, reprimand a licensee or place his license on probation with such terms and conditions and for such time as it may designate, impose a monetary penalty, or revoke a license for any of the following causes:

* * *

5. Incompetence or negligence in the practice of the profession;
6. Failure to comply with applicable state and federal statutes or regulations specifying the consultations and examinations required prior to the fitting of a new or replacement prosthetic aid for any communicatively impaired person;

* * *

8. Failure to supervise persons who assist them in the practice of speech-language pathology and audiology as well as failure to disclose the use and identity of unlicensed;

* * *

10. Failure to comply with federal, state, or local laws and regulations governing the practice of audiology and speech-language pathology;
11. Failure to comply with any regulations of the board;
12. Inability to practice with skill and safety;
13. Misrepresentation of one's professional credentials;
14. Aiding and abetting unlicensed activity;

A. Examples of Reportable Conduct.

1. Three-year old child only grunts and does not form words with his mouth. The parents seek an evaluation at a local children's hospital. After the initial evaluation, the speech-language pathologist guarantees the complete enunciation of all phonetic sounds by the child at the end of five treatments. 18 VAC 30-20-280
2. A speech-language pathologist allows unlicensed staff to provide testing and treatment of a stroke patient in a nursing home. There is no supervision or initial evaluation by the licensed speech-language pathologist. 18 VAC 30-20-280 (15.)

3. An audiologist contracts with a nursing home to fit and sell hearing aids. He does not hold a hearing specialist license. 18 VAC 30-20-280 (14) and § 54.1-2601.5.
4. A child is referred to an audiologist for extensive hearing testing. The child is found to be profoundly hearing-impaired. The audiologist believes that there is an obstruction in the ear canal and begins to remove wax from the ear (cerumen management). During the procedure, the eardrum is punctured. 18 VAC 30-20-280 (7) and 54.1-2600.
5. A speech-language pathologist allows an unlicensed assistant to bill for his services and the speech-language pathologist signs the treatment plan without ever seeing the patient. 18 VAC 30-20-280(13) and/or (15).

D. Examples of Non-Reportable conduct

1. A hearing aid specialist provides audiological testing and prescribes cochlear implants.
2. A speech-language pathologist who is licensed by the public schools uses the term speech-language pathologist.
3. A speech-language pathologist in a hospital provides the initial audiological screening for a delayed language patient. He refers the patient to an audiologist.
4. A patient in a hospital is referred to a speech-language pathologist for evaluation and enhancement of verbal communication skills. There is no improvement in skills after six weeks of treatment. Also, the patient is severely mentally retarded.
5. An autistic child is referred to a speech-language pathologist for treatment in a clinic. The child is unable to concentrate and is constantly moving. Treatment cannot be provided. The child's parents see no improvement in the communication skills of the child.

APPENDIX B

Board of Counseling

A. Statutory and Regulatory Bases for Disciplinary Actions

- Va. Code § 8.01-400.2 -- Communications between counselors, social workers and psychologists and clients.
 - Va. Code § 20-124.6 -- Access to child's records.
 - Va. Code § 32.1-127.1:03 -- Patient health records privacy.
 - Va. Code § 54.1-2400.1 -- Mental health service providers; duty to protect third parties; immunity.
 - Va. Code § 54.1-2400.4 -- Mental health service providers duty to inform; immunity; civil penalty.
 - Va. Code § 54.1-2403.3 -- Medical records; ownership; provision of copies.
 - Va. Code § 54.1-2406 -- Treatment records of practitioners.
 - Va. Code § 54.1-2400.7 -- Practitioners treating other practitioners for certain disorders to make reports; immunity from liability.
 - Va. Code § 63.2-1509. Physicians, nurses, teachers, etc., to report certain injuries to children; penalty for failure to report.
- 18 VAC 115-20-130 – Standards of practice (Professional Counseling)
18 VAC 115-50-110 – Standards of practice (Marriage and Family Therapy)
18 VAC 115-30-140 – Standards of practice (Certified Substance Abuse Counselors)
18 VAC 115-60-130 – Standards of practice (Licensed Substance Abuse Treatment Practitioners)
18 VAC 115-40-40 – Standards of practice (Certified Rehabilitation Provider)

B. Provisions of Law Most Commonly Cited as Bases for Board Action

18 VAC 115-20-130 -- Licensed Professional Counseling

* * *

B. Persons licensed by the board shall:

* * *

5. Be able to justify all services rendered to clients as necessary for diagnostic or therapeutic purposes and attempt to terminate a private service or consulting relationship when it becomes clear that the consumer is not benefiting from the relationship.

* * *

15. Maintain client records securely, inform all employees of the requirements of confidentiality and provide for the destruction of records which are no longer useful. Client records shall be disclosed to others only with expressed written

consent or as mandated by law. Client confidentiality in the usage of client records and clinical materials shall be ensured by obtaining informed consent from clients before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using client records and clinical materials in teaching, writing or public presentations. Client records shall be kept for a minimum of five years from the date of termination of the counseling relationship.

16. Not engage in dual relationships with clients, former clients, residents supervisees, and supervisors that compromise the client's or resident's well being, impair the counselor's or supervisor's objectivity and professional judgment or increase the risk of client or resident exploitation. This includes, but is not limited to, such activities as counseling close friends, former sexual partners, employees or relatives, and engaging in business relationships with clients. Engaging in sexual intimacies with current clients or residents is strictly prohibited. For at least five years after cessation or termination of professional services, licensees shall not engage in sexual intimacies with a therapy client or those included in collateral therapeutic services. Since sexual or romantic relationships are potentially exploitative, licensees shall bear the burden of demonstrating that there has been no exploitation. A patient's consent to, initiation of or participation in sexual behavior or involvement with a practitioner does not change the nature of the conduct nor lift the regulatory prohibition.

C. Examples of Reportable Conduct

1. Failure to report known or suspected child abuse. Va. Code § 63.2-1509.
2. Boundary violations, which may include entering into a business relationship with a client, bartering for services in lieu of payment for services, or developing a social relationship with a client. 18 VAC 115-20-130.B.16.
3. Engaging in a romantic or sexual relationship with a client or former client, spouse or relative of a client. 18 VAC-115-20-130.B.16.
4. Failure to create or maintain therapy records. 18 VAC 115-20-130.B.15.
5. Failure to maintain the confidentiality of the therapeutic relationship. 18 VAC 115-20-130.B.15.

D. Examples of Non-Reportable Conduct

1. Billing for frequent or excessive returned phone calls to the client.
2. Charging for last minute cancellations for scheduled appointments.
3. Providing pertinent clinical information and diagnoses to third party payers.

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4. Termination of the therapeutic relationship when it is no longer helpful or referring the client to another therapist.
5. Confronting a client about inappropriate behavior.

APPENDIX C

Board of Dentistry

A. Statutory and Regulatory Bases for Disciplinary Action

Va. Code § 54.1-2706 – Revocation or suspension; other sanctions (prohibited conduct)

18 VAC 60-20-50 – Requirements for continuing education

18 VAC 60-20-170 – Acts constituting unprofessional conduct

B. Provisions of Law Most Commonly Cited as Bases for Board Action

Va. Code § 54.1-2706. Revocation or suspension; other sanctions.

A. The Board may refuse to admit a candidate to any examination, refuse to issue a license to any applicant, suspend for a stated period or indefinitely, or revoke any license or censure or reprimand any licensee or place him on probation for such time as it may designate for any of the following causes:

* * *

5. Intentional or negligent conduct in the practice of dentistry or dental hygiene which causes or is likely to cause injury to a patient or patients;

* * *

10. Conducting his practice in a manner contrary to the standards of ethics of dentistry or dental hygiene or in a manner presenting a danger to the health and welfare of his patients or to the public;

* * *

14. The violation of any provision of a state or federal law or regulation relating to manufacturing, distributing, dispensing or administering drugs.

C. Examples of Reportable Conduct

1. Placing a crown on a tooth where there is inadequate support due to severe bone loss; failing to take radiographs when needed to evaluate treatment outcomes; or failing to correct bridgework with leaking margins. Va. Code § 54.1-2706.5.

2. Practicing while under the influence of drugs or alcohol; undertaking complex orthodontic treatment without adequate training in orthodontics; failing to provide for emergency care of patients; or failing to update a patient's health history. Va. Code § 54.1-2706.10.

3. Prescribing medication without a bona fide doctor/patient relationship; prescribing medications for treatment of conditions outside the scope of the practice of dentistry; or maintaining expired drugs. Va. Code § 54.1-2706.14.

D. Examples of Non-Reportable Conduct

1. Objection to the amount charged by a dentist.
2. Discrepancies between dental insurance coverage and the treatment provided by a dentist.

APPENDIX D

Board of Medicine

A. Statutory and Regulatory Bases for Disciplinary Actions

- Va. Code 54.1-2403 – Certain advertising prohibited
- Va. Code § 54.1-2914 – Unprofessional conduct. Section (A)(13) covers violations of any provision of 54.1- 2900 et seq.)
- Va. Code § 54.1-2915 – Refusal; suspension or revocation; other disciplinary actions
- Va. Code § 54.1-2916 – Additional grounds for refusal; suspension or revocation
- Va. Code § 54.1-3302 – Restrictions on practitioners of the healing arts
- Va. Code § 54.1-3303 -- Prescriptions to be issued and drugs to be dispensed for medical or therapeutic purposes only
- Va. Code § 54.1-3304 – Licensing of physicians to dispense drugs; renewals
- Va. Code § 54.1-3408 – Professional use (of controlled substances) by practitioners
- Va. Code § 54.1-3408.01 – Requirements for prescriptions

- 18 VAC 85-20-30 -- Advertising ethics.
- 18 VAC 85-20-40 -- Vitamins, minerals and food supplements.
- 18 VAC 85-20-50 -- Anabolic steroids
- 18 VAC 85-20-80 -- Solicitation or remuneration in exchange for referral
- 18 VAC 85-20-90 -- Pharmacotherapy for weight loss
- 18 VAC 85-20-100 -- Sexual contact with patients
- 18 VAC 85-20-105 -- Refusal to provide information.

B. Provisions of Law Most Commonly Cited as Bases for Board Action

§ 54.1-2914. Unprofessional conduct.

A. Any practitioner of the healing arts regulated by the Board shall be considered guilty of unprofessional conduct if he:

* * *

6. Aids or abets, has professional connection with, or lends his name to any person known to him to be practicing illegally any of the healing arts;

7. Conducts his practice in a manner contrary to the standards of ethics of his branch of the healing arts;

8. Conducts his practice in such a manner as to be a danger to the health and welfare of his patients or to the public;

9. Is unable to practice with reasonable skill or safety because of illness or substance abuse;

* * *

11. Performs any act likely to deceive, defraud or harm the public;

12. Violates any provision of statute or regulation, state or federal, relating to the manufacture, distribution, dispensing or administration of drugs;

* * *

14. Engages in sexual contact with a patient concurrent with and by virtue of the practitioner/patient relationship or otherwise engages at any time during the course of the practitioner/patient relationship in conduct of a sexual nature that a reasonable patient would consider lewd and offensive.

§ 54.1-2915. Refusal; suspension or revocation; other disciplinary actions.

A. The Board may refuse to admit a candidate to any examination, refuse to issue a certificate or license to any applicant, and may suspend for a stated period of time or indefinitely, or revoke any certificate or license or censure or reprimand any person or place him on probation for such time as it may designate for any of the following causes:

1. False statements or representations or fraud or deceit in obtaining admission to the practice, or fraud or deceit in the practice of any branch of the healing arts;

* * *

6. Restriction of a license to practice a branch of the healing arts in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction.

18VAC85-20-30. Advertising ethics.

A. Any statement specifying a fee for professional services which does not include the cost of all related procedures, services and products which, to a substantial likelihood, will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.

B. Advertising a discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment which is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bonafide emergency.

C. Advertisements of discounts shall disclose the full fee and documented evidence to substantiate the discounted fees.

D. A licensee or certificate holder's authorization of or use in any advertising for his practice of the term "board certified" or any similar words or phrase calculated to convey the same meaning shall constitute misleading or deceptive advertising under §54.1-2914 of the Code of Virginia, unless the licensee or certificate holder discloses the complete name of the specialty board which conferred the aforementioned certification.

E. It shall be considered unprofessional conduct for a licensee of the board to publish an advertisement which is false, misleading, or deceptive.

18 VAC 85-20-100. Sexual contact with patients.

A. For purposes of §54.1-2914 A 16 of the Code of Virginia, sexual contact between a practitioner and a patient includes, but is not limited to, sexual behavior or involvement with a patient including verbal or physical behavior which:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the patient, or both; or
2. May reasonably be interpreted as romantic involvement with a patient regardless of whether such involvement occurs in the professional setting or outside of it.

B. The determination of when a person is a patient for purposes of §54.1-2914 A 16 of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a patient until the patient-practitioner relationship is terminated. Sexual contact between a practitioner and a former patient after termination of the practitioner-patient relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

C. A patient's consent to, initiation of, or participation in sexual behavior or involvement with a practitioner does not change the nature of the conduct nor lift the statutory prohibition.

C. Examples of Reportable Conduct

1. Nursing staff and colleagues observe that a physician is slurring his words and making uncharacteristic comments during rounds. One nurse thought he smelled alcohol on the physician's breath. Two patients reported the same. The Administrator of the hospital was notified and following her review and investigation of the matter, reported the incident as **possible impairment** to the Board of Medicine. **Va. Code § 54.1-2914(A) (9)**

2. The Medical Staff office receives a call from an attorney in another state who says he is suing a physician on staff for her care in a case at her previous practice in the other state. During the call the attorney indicates that the physician does not have a credential that the Medical Staff knows her to have claimed during initial credentialing. After confirmation, the allegation appears to be true. The Chief of the Medical Staff reported the matter to the Board of Medicine as a **fraudulent** claim by the physician. **Va. Code § 54.1-2915(A) (1)**
3. A patient of Doctor X was admitted through the emergency department with myocardial ischemia. Dr. X gave telephone orders to admit the patient, which the nurses dutifully followed. However, in the next 24 hours, Dr. X did not round on the patient and could not be reached by phone or pager. The nursing staff had no alternative but to inform the Chief of the Medical Staff, who arranged for the patient's care with another doctor. This **dangerous neglect** of this patient was deemed serious, and potentially life-threatening, and in the best judgment of the Chief of Staff, required reporting to the Board of Medicine. **Va. Code § 54.1-2914(A)(8).**
4. Despite precautionary comments from the Chief Surgical Nurse and several other staff in the OR about a pre-op patient's fluctuating vital signs, the surgeon angrily ordered the team to press on and begin the procedure. Twenty minutes into the case, the patient became bradycardic, hypotensive, arrested and died on the table. Review of this matter showed that the physician's intentional disregard of the patient's pre-op condition breached the **standard of care**, whereupon the Administrator made a report to the Board of Medicine. **Va. Code § 54.1-2914(A) (8); see also new § 54.1-2915(A)(4) (intentional conduct).**
5. Administrator learns that one of the physicians on staff is **utilizing unlicensed individuals** to perform x-rays in his office. **Va. Code § 54.1-2914(A)(6).**
6. Dr. X, a family practitioner, treats Patient A. Dr. X does not have admission privileges, but his partner, Dr. Y, admits Patient A to the hospital during an acute episode of illness. Patient A informs the nursing staff that she is involved in a **sexual relationship** with Dr. X. The Director of Nursing takes the matter to the Administrator, who deems a report to the Board of Medicine to be warranted. **Va. Code § 54.1-2914(A)(14) & 18 VAC 85-20-100.**
7. The hospital pharmacist informs the Administrator that it appears that Dr. X wrote a prescription in the name of Patient A that was then given to Patient B, her sister. During investigation of this matter, Dr. X admitted to the writing of a **fraudulent prescription**, albeit with altruistic intent, in the name of one of his patients, whose sister was indigent and unable to afford medication. **Va. Code § 54.1-2914(A)(12).**
8. A physician places an ad in the metropolitan newspaper that says his services with a questionable new technology are the best around and guarantees a result superior to those of conventional approaches. He is reported to the Board for **claims of superiority and possible misleading advertising** in accordance with **Section 54.1-2403 of the Code of Virginia and 18 VAC 85-20-30.**

D. Examples of Non-Reportable Conduct

1. The Director of Health Information Systems notified Dr. X that he was delinquent in his discharge summary dictations and would have his admission privileges suspended until they were completed. Dr. X completed his **medical records** in less than 30 days and was taken off the suspension list.
2. At re-credentialing time, Dr. X cannot provide the Medical Staff office with the required number of hours of **CME**. She is placed on probationary status until such time as she can provide evidence of completing the required number of hours. Dr. X does so in less than 30 days and her probation is terminated.
3. Dr. X is on call for his group Saturday night, but when called by the Emergency Department, his wife tells them that he is not feeling well and to call his partner who is on second call. The partner responds. On Monday morning, Dr. X confides in the Chief of Staff that he has diabetes, was experiencing an elevated blood sugar, and was very sorry for his inability to respond. He provides information from his treating physician and assures the Chief of Staff that he would do everything to prevent his **physical illness** from interfering with his patient care responsibilities in the future.
4. Dr. X is discourteous to nurses and patients alike. Her medical care is not in question. Occasionally the Administrator gets complaints from patients about Dr. X's "bedside manner." Although her **personal style** lacks gentility, she is not reported to the Board of Medicine.
5. Dr. X is the subject of a newspaper report after his arrest for DUI on a Saturday night. The Administrator and Chief of Staff investigate this matter and determine that this **DUI was an isolated incident, did not occur when the physician was on call, was not indicative of an ongoing problem of substance abuse or impairment**, and, accordingly, do not report to the Board of Medicine.
6. It is recommended to hospitalized patient that he be seen by Dr. X, a specialist. Patient calls doctor's office and asks whether Dr. X participates in Acme Insurance Company's preferred provider organization. Receptionist answers, "Yes, I think he does." Attending staff physician arranges for patient to be seen by Dr. X; patient subsequently receives a bill for services and discovers that **Dr. X does not, in fact, participate with the insurer**. Complaint is made to hospital administrator, who is aware of **no other such complaints** regarding the physician and does not make a report to the Board of Medicine.

Board of Nursing

A. Statutory and Regulatory Bases for Disciplinary Action

Va. Code § 54.1-3007 – Refusal, revocation or suspension, censure or probation

Va. Code § 54.1-3008 – Particular violations; prosecution

18 VAC 90-20-300 – Disciplinary provisions (RNs, LPNs)

18 VAC 90-30-220 – Grounds for disciplinary action against the license of a licensed nurse practitioner

18 VAC 90-40-130 – Grounds for disciplinary action (prescriptive authority of licensed nurse practitioners)

18 VAC 90-20-360 – Denial, revocation or suspension (C.N.A.s)

B. Provisions of Law Most Commonly Cited as Bases for Board Action

I. For Nurses:

Va. Code § 54.1-3007. Refusal, revocation or suspension, censure or probation.

The Board may refuse to admit a candidate to any examination, refuse to issue a license or certificate to any applicant and may suspend any license or certificate for a stated period or indefinitely, or revoke any license or certificate or censure or reprimand any licensee or certificate holder or place him on probation for such time as it may designate for any of the following causes:

* * *

2. Unprofessional conduct;

* * *

4. Conviction of any felony or any misdemeanor involving moral turpitude;

5. Practicing in a manner contrary to the standards of ethics or in such a manner as to make his practice a danger to the health and welfare of patients or to the public;

6. Use of alcohol or drugs to the extent that such use renders him unsafe to practice, or any mental or physical illness rendering him unsafe to practice;

7. The denial, revocation, suspension or restriction of a license or certificate to practice in another state, the District of Columbia or a United States possession or territory; or

8. Abuse, negligent practice, or misappropriation of a patient's or resident's property.

§ 54.1-3008. Particular violations; prosecution.

It shall be a Class 1 misdemeanor for any person to:

* * *

2. Practice nursing unless licensed to do so under the provisions of this chapter;

* * *

4. Use in connection with his name any designation tending to imply that he is a professional nurse or a practical nurse unless duly licensed to practice under the provisions of this chapter

18 VAC 90-20-300. Disciplinary provisions.

A. The board has the authority to deny, revoke or suspend a license issued, or to otherwise discipline a licensee upon proof that the licensee has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

* * *

2. **Unprofessional conduct** shall mean, but shall not be limited to:

- a. Performing acts beyond the limits of the practice of professional or practical nursing as defined in Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia, or as provided by §§ 54.1-2901 and 54.1-2957 of the Code of Virginia;
- b. Assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained;
- c. Obtaining supplies, equipment or drugs for personal or other unauthorized use;
- d. Employing or assigning unqualified persons to perform functions that require a licensed practitioner of nursing;
- e. Falsifying or otherwise altering patient or employer records;
- f. Abusing, neglecting or abandoning patients or clients;
- g. Practice of a clinical nurse specialist beyond that defined in 18 VAC 90-20-290; or
- h. Representing oneself as or performing acts constituting the practice of clinical nurse specialist unless so registered by the board.
- i. Delegating nursing tasks to an unlicensed person in violation of the provisions of Part IX (18 VAC 90-20-420 et seq.) of this chapter.

II. For Licensed Nurse Practitioners – in addition to the above

18 VAC 90-30-220. Grounds for disciplinary action against the license of a licensed nurse practitioner.

The boards may deny licensure or relicensure, revoke or suspend the license, or place on probation, censure or reprimand a nurse practitioner upon proof that the nurse practitioner:

1. Has had his license to practice nursing in this Commonwealth or in another jurisdiction revoked or suspended or otherwise disciplined;
* * *
3. Has exceeded his authority as a licensed nurse practitioner;
* * *
5. Has become unable to practice with reasonable skill and safety to patients as the result of physical or mental illness or the excessive use of alcohol, drugs, narcotics, chemicals, or any other type of material

For L.N.P.s with Prescriptive Authority

18 VAC 90-40-130. Grounds for disciplinary action.

The boards may deny approval of prescriptive authority, revoke or suspend authorization, or take other disciplinary actions against a nurse practitioner who:

1. Exceeds his authority to prescribe or prescribes outside of the written practice agreement with the supervising physician.
2. Has had his license as a nurse practitioner suspended, revoked or otherwise disciplined by the boards pursuant to 18 VAC 90-30-220 and 18 VAC 85-70-220.

III. For Certified Nurse Aides

§ 54.1-3007. Refusal, revocation or suspension, censure or probation.

The Board may refuse to admit a candidate to any examination, refuse to issue a license or certificate to any applicant and may suspend any license or certificate for a stated period or indefinitely, or revoke any license or certificate or censure or reprimand any licensee or certificate holder or place him on probation for such time as it may designate for any of the following causes:

1. Fraud or deceit in procuring or attempting to procure a license;
2. Unprofessional conduct;
* * *
4. Conviction of any felony or any misdemeanor involving moral turpitude;
5. Practicing in a manner contrary to the standards of ethics or in such a manner as to make his practice a danger to the health and welfare of patients or to the public;
6. Use of alcohol or drugs to the extent that such use renders him unsafe to practice, or any mental or physical illness rendering him unsafe to practice;
* * *
8. Abuse, negligent practice, or misappropriation of a patient's or resident's property.

18 VAC 90-20-360. Denial, revocation or suspension.

The board has the authority to deny, revoke or suspend a certificate issued, or to otherwise discipline a certificate holder upon proof that he has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

1. **Fraud or deceit** shall mean, but shall not be limited to:

* * *

- b. Falsely representing facts on an application for initial certification, reinstatement or renewal of a certificate; or

§ 54.1-3007. Refusal, revocation or suspension, censure or probation.

The Board may refuse to admit a candidate to any examination, refuse to issue a license or certificate to any applicant and may suspend any license or certificate for a stated period or indefinitely, or revoke any license or certificate or censure or reprimand any licensee or certificate holder or place him on probation for such time as it may designate for any of the following causes:

1. Fraud or deceit in procuring or attempting to procure a license;
2. Unprofessional conduct;

* * *

4. Conviction of any felony or any misdemeanor involving moral turpitude;
5. Practicing in a manner contrary to the standards of ethics or in such a manner as to make his practice a danger to the health and welfare of patients or to the public;
6. Use of alcohol or drugs to the extent that such use renders him unsafe to practice, or any mental or physical illness rendering him unsafe to practice;

* * *

8. Abuse, negligent practice, or misappropriation of a patient's or resident's property.

18 VAC 90-20-360. Denial, revocation or suspension.

The board has the authority to deny, revoke or suspend a certificate issued, or to otherwise discipline a certificate holder upon proof that he has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

* * *

2. **Unprofessional conduct** shall mean, but shall not be limited to:

* * *

- c. Obtaining supplies, equipment or drugs for personal or other unauthorized use;
 - d. Falsifying or otherwise altering client or employer records;

e. Abusing, neglecting or abandoning clients;

* * *

C. Examples of Reportable Conduct

1. For Nurses

- A nurse engaged in an inappropriate and unprofessional relationship with a psychiatric patient with whom she visited on her days off and arranged to go with on a vacation. On other occasions she regularly hugged and kissed this patient during the course of her care. Va. Code § 54.1-3007(2), unprofessional conduct.
- The nurse initiated treatment of a decubitus ulcer that was a change in the patient's condition and did not inform the physician for 5 days. 18 VAC 90-20-300(A)(2)(a), unprofessional conduct.
- The nurse obtained IV fluids, needles and supplies from the hospital emergency room to use to treat a family member who was receiving home care. Va. Code § 54.1-3007(2); 18 VAC 90-20-300(A)(2)(c)
- The nurse failed to include employment with X and Y hospitals, her two most recent nursing employments, on her application for employment as requested in the employment history section of the application. Va. Code § 54.1-3007(2); 18 VAC 90-20-300(A)(2)(e).
- The nurse left her assigned patients in the middle of her shift and did not return, without reporting she was leaving to her supervisor or other nursing staff. Va. Code § 54.1-3007(2); 18 VAC 90-20-300(A)(2)(f)
- On x date, in Z court, the nurse was convicted of grand larceny, a felony. Va. Code § 54.1-3007(4).
- The nurse failed to complete ordered treatments on several patients. However, she documented on the treatment record that these things were done. Va. Code § 54.1-3007(5).
- The nurse was noted on duty to have slurred speech, unsteady gait, and alcohol on her breath. A drug screen was ordered for cause, which yielded positive results for alcohol and opiates. Va. Code § 54.1-3007(6).
- The license of Nurse X was placed on probation with terms for 3 years by the Colorado Board of Nursing on x date. Va. Code § 54.1-3007(7).
- The nurse inappropriately responded to a patient by using profanity and racial slurs when the patient was uncooperative with care being delivered. Va. Code § 54.1-3007(8).

- The nurse failed to renew her license to practice as a R.N., which expired on X date. She continued to practice for 12 months without a valid license to practice nursing in Virginia. Va. Code § 54.1-3008(2).

2. For Licensed Nurse Practitioners

- The nurse's R.N. license to practice in Maryland was suspended on x date. 18 VAC 90-30-220(1).
- The L.N.P. provided care to a high risk obstetrical patient without collaborating with her supervising physician as required by her written protocol. 18 VAC 90-30-220(3).
- During a surgical procedure, the C.R.N.A. was noted to have slurred speech, to be dozing, and did not adequately monitor the patient's vital signs. An audit of the medication revealed excessive amounts of anesthetic agents signed out without corresponding documentation of administration to the patient. 18 VAC 90-30-220(5).

For Licensed Nurse Practitioners With Prescriptive Authority

- Review of patient records revealed the L.N.P. prescribed steroid medication for patients on several occasions which were not authorized by her practice agreement approved by the Board of Nursing. 18 VAC 90-40-130 (1),

3. For Certified Nurse Aides:

- C.N.A. applicant marked “no” to the question inquiring had she ever had past action in another jurisdiction on her initial application for certification by endorsement submitted in 2000, when she was placed on the abuse registry by the state of West Virginia in 1998. Va. Code § 54.1-3007(1), 18 VAC 90-20-360(1)(b).
- During the course of her employment at X nursing home, the C.N.A. took insulin syringes from the facility stock without permission for use by a diabetic family member. Va. Code § 54.1-3007(2), 18 VAC 90-20-360(2)(c).
- During the course of providing care to a patient in her home, the C.N.A. documented that she worked 6 hours on x date. However, according to the patient she was only in the home for 2 hours on that date. Va. Code § 54.1-3007(2); 18 VAC 90-20-360 (2)(d).
- On x date, in Z court, the C.N.A. was convicted of shoplifting, a misdemeanor. Va. Code § 54.1-3007(4).
- In response to a resident’s repetitive requests for assistance, the C.N.A. removed the resident’s call bell from his reach. Va. Code § 54.1-3007(5).
- While on duty, the C.N.A. was noted to smell of alcohol and was slow to respond to call bells. A subsequent for cause drug screen was positive for alcohol. Va. Code § 54.1-3007(6).
- The C.N.A. restrained an elderly combative resident who was resisting care by tying him to the side rails with a sheet at the beginning of her shift. The C.N.A. forgot to remove the restraints and they remained in place the entire 8 hour shift. Va. Code § 54.1-3007(8).
- During the course of providing care in the resident’s home, the CNA made personal long distance phone calls at the resident’s expense totaling \$76. Va. Code § 54.1-3007 (8).

D. Examples of Non-Reportable Conduct

- The licensee failed to report for duty as assigned and did not notify her supervisor at the facility.
- When confronted about a performance issue by her supervisor in her office, the licensee became loud and agitated and cursed and threatened the supervisor.

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- At the end of the licensee's 3-11p.m. shift, she was informed she had to work another 8 hours due to staffing shortage. The licensee refused to stay due to personal reasons and left the facility.

APPENDIX F

Board of Nursing Home Administrators

A. Statutory and Regulatory Bases for Disciplinary Actions

Va. Code § 54.1-3103. Supervision by a Licensed Administrator

18 VAC 95-20-470. Unprofessional Conduct

B. Provisions of Law Most Commonly Cited as Bases for Board Action

18 VAC 95-20-470. Unprofessional conduct.

The board may refuse to admit a candidate to an examination, refuse to issue or renew a license or approval to any applicant, suspend a license for a stated period of time or indefinitely, reprimand a licensee, place his license on probation with such terms and conditions and for such time as it may designate, impose a monetary penalty, or revoke a license for any of the following causes:

1. Conducting the practice of nursing home administration in such a manner as to constitute a danger to the health, safety, and well-being of the residents, staff, or public;
2. Failure to comply with federal, state, or local laws and regulations governing the operation of a nursing home;

* * *

C. Examples of Reportable Conduct

- A pattern of harmful or potentially harmful conditions relating to patient care, in apparent violation of federal, state, or local laws that govern nursing home operations. 18 VAC 95-20-470. It is worthwhile to note that, pursuant to Va. Code § 54.1-2400.6.C, the Commissioner of Health has a duty to report to the relevant board any information of which the Department of Health may become aware indicating that a nursing home administrator or other health professional may have engaged in certain misconduct.
- Verified complaints, whether raised by staff, residents, or family members, of needed care not being provided to residents. 18 VAC 95-20-470.
- Reports of suspected impairment or use of drugs or alcohol by an administrator while at the facility. 18 VAC 95-20-470

D. Non-Reportable Conduct

- Accidents or incidents if appropriate policies were followed.
- Termination of services to a resident in accordance with policies.

APPENDIX G

Board of Optometry

A. Statutory and Regulatory Bases for Disciplinary Actions

- Va. Code § 54.1-111. Unlawful acts; prosecution; proceedings in equity; civil penalty
- Va. Code § 54.1-3200. Definitions
- Va. Code § 54.1-3201. What constitutes practice of optometry
- Va. Code § 54.1-3204. Prohibited acts
- Va. Code § 54.1-3215. Reprimand, revocation and suspension.
- Va. Code § 54.1-3216. Evidence; mental or physical examinations.
- Va. Code § 54.1-3219. Continuing education
- Va. Code § 54.1-3224. Denial, etc., of TPA certification; disciplinary actions; summary suspension under certain circumstances.

Regulations of the Virginia Board of Optometry:

- 18 VAC 105-20-40 Unprofessional conduct
- 18 VAC 105-20-45 Standards of practice
- 18 VAC 105-20-70. Requirements for continuing education

Regulations for Certification for Therapeutic Pharmaceutical Agents:

- 18VAC105-30-60 Treatment guidelines
- 18VAC 105-20-70 Therapeutic pharmaceutical agents

B. Provisions of Law Most Commonly Cited as Bases for Board Action

Statutes

Va. Code §§ 54.1-3215, 54.1-3216, 54.1-3219, and 54.1-3224 provide the primary bases for Board disciplinary action. Among those most relevant to practice within an institution are:

- Fraud or deceit and obtaining any fee by fraud or misrepresentation against a patient;
- Felony conviction;
- Misdemeanor conviction involving moral turpitude;
- Practice that endangers health and welfare;
- Mental or physical illness, or the use of alcohol or drugs, which renders the practitioner unsafe to practice;
- Knowingly and willfully employing, procuring, or inducing an unlicensed person to practice optometry;
- Practicing with an infectious or contagious disease;
- Not displaying a current license,

- Practicing or attempting to practice under a name other than as licensed with the Board, and
- Failing to obtain adequate continuing education.

Va. Code §§ 54.1-3200 and 54.1-3201 define the practice of optometry and provide for exemptions to licensure. Sections 54.1-111 and 54.1-3204 prohibit unlicensed practice; this encompasses an optometrist practicing beyond his scope as well as aiding and abetting an unlicensed person's practice.

Regulations

The Board of Optometry has two sets of regulations governing practice (18 VAC 105-20-10 *et seq.* and 18 VAC 105-30-10 *et seq.*). The following regulations provide for the Board's determination of unprofessional conduct and standards of practice applicable to all optometrists, and, separately, to the scope of practice and continuing education requirements for optometrists certified to use therapeutic pharmaceutical agents (TPA).

General Regulations

Section 18 VAC 105-20-40. Unprofessional conduct. Failing to:

- Identify self as an optometrist;
- Maintain patient records for five years;
- Post a chart/directory of all optometrists practicing in location;
- Maintain patient records,
- Perform procedures,
- Make recommendations during eye examination, contact lens examination, or treatment necessary to protect patient health and safety;
- Notify patients of practice termination; and
- Give a reasonable notice of practice closure and information of where records may be obtained.

Section 18 VAC 105-20-45. Standards of Practice. A complete record of all examinations made of a patient shall include a diagnosis and any treatment and shall also include but not be limited to:

- During a comprehensive eye examination: Case history, acuity measure, internal and external health evaluation, recommendations and directions to the patients, including prescriptions.
- During an initial contact lens examination: The requirements of a comprehensive eye examination, assessment of corneal curvature and corneal/contact lens relationship, acuity through the lens, directions for the care and handling of lenses and an explanation of the implications of contact lenses with regard to eye health and vision.
- During a follow-up contact lens examination: Assessment of corneal/contact lens relationship and anterior segment health, acuity through the lens, such further instructions as necessary for the individual patient.

- The record of any examination shall include the signature of the attending optometrist and if indicated, refraction of the patient.
- The following information shall appear on a prescription for ophthalmic goods: The printed name of the prescribing optometrist, the address and telephone number at which the patient's records are maintained and the optometrist can be reached for consultation, patient name, optometrist signature, date of the examination and an expiration date, if medically appropriate, and any special instructions.
- Sufficient information for complete and accurate filling of an established contact lens prescription shall include but not be limited to the power, the material or manufacturer or both, the base curve or appropriate designation, the diameter when appropriate, and medically appropriate expiration date.
- A licensed optometrist shall provide a written prescription for spectacle lenses upon the request of the patient once all fees have been paid. In addition, he shall provide a written prescription for contact lenses upon the request of the patient once all fees have been paid and the prescription has been established and the follow-up care completed. Follow-up care will be presumed to have been completed if no reappointment is recommended within 60 days after the last visit.

18 VAC 105-20-70. Requirements for continuing education (CE). For all optometrists, 16 hours are required and 14 of these must relate directly to patient care; up to two hours may relate to record-keeping and cardiopulmonary resuscitation (CPR). For TPA certified optometrists, at least two hours must relate directly to the prescribing and administration of TPAs. All continuing education courses shall be offered by an approved sponsor (refer to the regulation for further details).

TPA Regulations¹⁴

18 VAC 105-30-60. Treatment guidelines. A TPA certified optometrist may treat diseases and abnormal conditions of the structures of the human eye and its adnexa which may be appropriately treated with TPAs referenced in 18 VAC 105-30-70.

18 VAC 105-30-70. Therapeutic pharmaceutical agents. Optometrists are allowed to prescribe certain topically applied pharmaceutical agents (Schedule VI) or appropriate therapeutic combinations. The list of approved topicals includes anti-allergy, anti-glaucoma, anti-infective, and anti-inflammatory, cycloplegic, mydriatic, and decongestant agents listed in Chapter 12 *Drug Facts and Comparisons Updated Monthly* as it is updated. Injectable ophthalmic agents and otic preparations are excluded.

C. Examples of Reportable Conduct.

1. **Substandard care** (general) – Substandard care of a general nature may involve the optometrist failing to conduct a complete eye examination as described in the regulations. Substandard care may be alleged when an optometrist has failed to prescribe appropriate

¹⁴ This information is current as of 7/1/04. The Board is in the process, however, of developing new regulations relative to prescriptive authority for TPA certified optometrists.

lenses (if needed by the patient) or to otherwise treat a patient in the manner that is consistent with the diagnosis. It is considered general substandard care for the optometrist to fail to document patient records completely, with the information set forth in the regulations. Va. Code §§ 54.1-3204, 54.1-3215(3) & (17); 18 VAC 105-20-40 (2), (4), & (5) and 18 VAC 105-20-45.

2. **Substandard care (TPA)** – A TPA-certified optometrists may be rendering substandard care if he administers, dispenses or attempts to prescribe TPA agents inconsistent with his diagnosis or simply the wrong TPA agent. Va. Code §§ 54.1-3204, 54.1-3215(3) & (17), and 54.1-3214; 18 VAC 105-30-60 and 18 VAC 105-30-70

3. **Substandard care (practicing beyond scope)** – An optometrist may be practicing beyond his scope when he fails to properly refer a case to a TPA certified optometrist or ophthalmologist when the condition presenting is beyond his treatment scope. It would also be alleged when an optometrist administers, dispenses or attempts to prescribe TPA agents without TPA certification. Va. Code §§ 54.1-3204, 54.1-3215(3) & (17), and 54.1-111(2), (3), & (4).

4. **Fraudulently obtaining controlled substances for personal use** – Optometrists who engage in this activity usually have done so through writing fraudulent prescriptions for fictitious or actual patients. Va. Code §§ 54.1-3204, 54.1-3215(1).

5. **Sexual misconduct** – Optometrists who inappropriately touch patients, staff, and/or others or make lewd remarks during the course of practice would be engaged in sexual misconduct punishable by the Board. Va. Code § 54.1-3215(2) & (3).

6. **Failing to complete required continuing education** -- For general and TPA certified optometrists, this includes fraudulently certifying to the Board that it has been obtained. Va. Code §§ 54.1-3219; 18 VAC 105-20-70.

D. Examples of Non-Reportable conduct

The following are examples of conduct, though problematic, are not actionable by the Board:

1. **Absenteeism/Tardiness** -- An optometrist's being late for or missing an appointment would not be reportable, unless the patient's health was adversely affected by it or there was a clear indication of substance abuse or mental and/or physical impairment.

2. **Appearance** – An optometrist's sloppy appearance would not be reportable, unless there are clear indicators of substance abuse or mental and/or physical impairment.

3. **Rudeness** – Also non-reportable would be an optometrist's brusque, curt, or rude behavior, again unless there are clear indicators of substance abuse or mental and/or physical impairment.

4. **Fee issues** – Unless an optometrist’s activities constitute fraudulent behavior, the Board has no jurisdiction over patient fees or other compensation issues.

5. **General personnel-related issues** – Unless they adversely affect patient care or constitute unprofessional conduct as defined in statute or regulation, personnel management problems such as the optometrist has failed to file timesheets, parked in a restricted space, or failed to attend staff meetings are not actionable by the Board.

Board of Pharmacy

A. Statutory and Regulatory Bases for Disciplinary Actions

Code of Virginia:

- § 54.1-111. Unlawful acts; prosecution; proceedings in equity; civil penalty.
- § 54.1-2400. General powers and duties of health regulatory boards
- § 54.1-2408.1. Summary suspension of licenses, certificates, registrations, or multistate licensure privilege; allegations to be in writing.
- § 54.1-2409. Mandatory suspension or revocation; reinstatement; appeal.
- § 54.1-3315. Unprofessional conduct
- § 54.1-3316. Refusal; revocation; suspension and denial.

Title 54.1, Chapter 33. Pharmacy

Title 54.1, Chapter 34. The Drug Control Act

Virginia Administrative Code:

- 18 VAC 110-20-10 et seq.**
- 18 VAC 110-30-10 et seq.**

B. Provisions of Law Most Commonly Cited as Bases for Board Action

Va. Code § 54.1-3316. Refusal; revocation; suspension and denial. – 1. negligent; **3.** incompetent; **4.** unsafe due to drugs or alcohol use; **5.** fraud or deceit; and **7.** has violated any law or regulation of the Board.

Va. Code § 54.1-3320. Acts restricted to pharmacists. – 6. verification of the accuracy of a completed prescription prior to dispensing the prescription.

Va. Code § 54.1-3462. Misbranded drug or device.

18 VAC 110-20-270 Dispensing of prescriptions; certification of completed prescriptions (C) verification of the accuracy of a completed prescription prior to dispensing the prescription; use of initials to verify accuracy and responsibility

Va. Code § 54.1-3434. Permit to conduct pharmacy.

18 VAC 110-20-180. Security system.

18 VAC 110-20-200. Storage of drugs, devices and controlled paraphernalia.

18 VAC 110-20-110. Pharmacy permits generally. - (C) pharmacist-in-charge to take an inventory when he leaves and return the permit to the board.

Va. Code § 54.1-3404. Persons required to keep record of drugs; contents and form of record.

C. Examples of Reportable Conduct

The pharmacist dispenses a medication with the incorrect medication and the bottle is mislabeled with the name of the medication that was actually prescribed.

[Va. Code §§ 54.1-3316(7), 54.1-3320(6), and 54.1-3462; 18 VAC 110-20-270]

A pharmacist has been diverting drugs from the pharmacy, using on duty, and performing his duties while impaired.

[Va. Code §§ 54.1-3316(1), (3), (4) and (7)]

A pharmacist has diverted drugs from the pharmacy by adulterating a patient's medications, thereby causing the patient to receive reduce dosages.

[Va. Code §§ 54.1-3316(1), (5) and (7)]

A pharmacist allows a pharmacy technician to work unsupervised.

[Va. Code §§ 54.1-3316(1) and (7); 18VAC 110-20-270(A)]

A pharmacist allows an individual to practice pharmacy without being licensed or an individual to practice as a pharmacy technician without being registered.

[Va. Code §§ 54.1-3316(1), (6) and (7); and 54.1-3434]

D. Examples of Non-Reportable Conduct

A source reports that when a pharmacist refused to fill his prescription, the pharmacist yelled at him and implied that he was addicted and a drug-seeking person.

A source reports that a pharmacy charges more for his prescription than did his former pharmacy.

A source reports that the pharmacist doesn't dress well and always wears shorts in the summer.

A pharmacist reports that his partner is usually 30 minutes late for work.

Board of Physical Therapy

A. Statutory and Regulatory Bases for Disciplinary Action

- Va. Code § 54.1-3473. Definitions.
- Va. Code § 54.1-3474. Unlawful to practice without a license; continuing competency requirements.
- Va. Code § 54.1-3476. Exemptions.
- Va. Code § 54.1-3480. Refusal, revocation or suspension.
- Va. Code § 54.1-3480.1. Continuing education.
- Va. Code § 54.1-3481. Unlawful designation as physical therapist or physical therapist assistant.
- Va. Code § 54.1-3482. Certain experience and referrals required; unlawful to practice physical therapist assistance except under direction and control of a licensed physical therapist.
- Va. Code § 54.1-3483. Unprofessional conduct.

- 18 VAC 112-20-90. Individual responsibilities to patients.
- 18 VAC 112-20-100. Supervisory responsibilities.
- 18 VAC 112-20-110. General requirements.
- 18 VAC 112-20-120. Individual responsibilities to patients and to physical therapists.
- 18 VAC 112-20-131. Continued competency requirements for renewal of an active license.

B. Provisions of Law Most Commonly Cited as Bases for Board Action

§ 54.1-3480. Refusal, revocation or suspension.

A. The Board may refuse to admit a candidate to any examination, may refuse to issue a license to any applicant, and may suspend for a stated period of time or indefinitely or revoke any license or censure or reprimand any person or place him on probation for such time as it may designate for any of the following causes:

1. False statements or representations or fraud or deceit in obtaining admission to the practice, or fraud or deceit in the practice of physical therapy;
2. Substance abuse rendering him unfit for the performance of his professional obligations and duties;
3. Unprofessional conduct as defined in this chapter;
4. Gross ignorance or carelessness in his practice, or gross malpractice;

* * *

6. Restriction of a license to practice physical therapy in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction;

* * *

B. The Board shall refuse to admit a candidate to any examination and shall refuse to issue a license to any applicant if the candidate or applicant has had his certificate or license to practice physical therapy revoked or suspended, and has not had his certificate or license

to so practice reinstated, in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction.

C. The Board may direct any licensee under a disciplinary order to furnish it, at such intervals as it may require, evidence that he is not practicing his profession in violation of this chapter. In addition, when the Board has probable cause to believe the licensee is unable to practice physical therapy with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the Board, after preliminary investigation by informal conference, may direct that the licensee submit to a mental or physical examination by physicians designated by it. Failure of the licensee to submit to the examination shall constitute grounds for disciplinary action.

Any licensee affected by this subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice physical therapy with reasonable skill and safety to patients

§ 54.1-3482. Certain experience and referrals required; unlawful to practice physical therapist assistance except under the direction and control of a licensed physical therapist.

* * *

C. Invasive procedures within the scope of practice of physical therapy shall at all times be performed only under the referral and direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry, dental surgery, licensed nurse practitioner as authorized in his practice protocol, or a licensed physician assistant acting under the supervision of a licensed physician or a licensed nurse practitioner as authorized in his practice protocol.

* * *

F. However, a licensed physical therapist may provide, without referral or supervision, physical therapy services to . . .

(iii) special education students who, by virtue of their individualized education plans (IEPs), need physical therapy services to fulfill the provisions of their IEPs; . . .

§ 54.1-3483. Unprofessional conduct.

Any physical therapist or physical therapist assistant licensed by the Board shall be considered guilty of unprofessional conduct if he:

* * *

3. Aids or abets, has professional contact with, or lends his name to any person known to him to be practicing physical therapy illegally;
4. Conducts his practice in such a manner as to be a danger to the health and welfare of his patients or to the public;
5. Is unable to practice with reasonable skill or safety because of illness or substance abuse;
6. Publishes in any manner an advertisement that violates Board regulations governing advertising;
7. Performs any act likely to deceive, defraud or harm the public;
8. Violates any provision of statute or regulation, state or federal, relating to controlled substances;
9. Violates or cooperates with others in violating any of the provisions of this chapter or regulations of the Board; or

10. Engages in sexual contact with a patient concurrent with and by virtue of the practitioner/patient relationship or otherwise engages at any time during the course of the practitioner/patient relationship in conduct of a sexual nature that a reasonable patient would consider lewd and offensive.

C. Examples of Reportable conduct.

1. In a hospital, an accident victim is referred to a physical therapist. The victim is partially paralyzed. A dry needling procedure is used to stimulate nerves in the muscles. A nerve is severely damaged causing additional trauma and injury to the patient. Va. Code §§ 54.1-3483 (4) and 54.1-3480 (4).
2. A physical therapist within a clinic setting routinely touches female patients inappropriately. The physical therapist massages the genital areas of the patient. Va. Code § 54.1-3483 (10).
3. A physical therapist advertises that he also provides athletic training. The physical therapist does not have a certification in athletic training. Va. Code § 54.1-3483 (7).
4. A physical therapist is an epileptic with uncontrolled seizures. She fails to take the proper medication and begins a physical therapy session with a patient. She has a seizure and knocks the patient off of a table and causes the injury to the patient. Va. Code § 54.1-2483 (5) and 54.1-2480.
5. A physical therapist assistant in a nursing home evaluates patients and develops treatment plans. 18 VAC 112-20-110 and 18 VAC 112-20-120.

D. Examples of Non Reportable Conduct

1. A physical therapist refuses a patient due to the non-referral of a physician and the cancellation of the patient's insurance.
2. A physical therapist provides direct services without a referral at a little league football game.
3. A physical therapist does not accept a referral from a physician.

Board of Psychology

A. Statutory and Regulatory Bases for Disciplinary Actions

- Va. Code § 8.01-400.2. Communications between counselors, social workers and psychologists and clients.
- Va. Code § 20-124.6. Access to child's records.
- Va. Code § 32.1-127.1:03. Patient health records privacy.
- Va. Code § 54.1-2400.1. Mental health service providers; duty to protect third parties; immunity.
- Va. Code § 54.1-2400.4. Mental health service providers' duty to inform; immunity; civil penalty.
- Va. Code § 54.1-2403.3. Medical records; ownership; provision of copies.
- Va. Code § 54.1-2406. Treatment records of practitioners.
- Va. Code § 54.1-2400.7. Practitioners treating other practitioners for certain disorders to make reports; immunity from liability.
- Va. Code § 63.2-1509. Physicians, nurses, teachers, etc., to report certain injuries to children; penalty for failure to report.
- Psychology – 18 VAC 125-20-150. Standards of practice.
- Sex Offender Treatment Provider – 18 VAC 125-30-100. Standards of practice.

B. Provisions of Law Most Commonly Cited as Bases for Board Action

18 VAC 125-20-150. Standards of practice.

* * *

B. Persons licensed by the board shall:

* * *

- 8. Not engage in sexual intimacies with a student, supervisee, resident, therapy patient, client, or those included in collateral therapeutic services (such as a parent, spouse, or significant other) while providing professional services. For at least two years after cessation or termination of professional services, not engage in sexual intimacies with a therapy patient, client, or those

included in collateral therapeutic services. Consent to, initiation of, or participation in sexual behavior or romantic involvement with a psychologist does not change the exploitative nature of the conduct nor lift the prohibition. Since sexual or romantic relationships are potentially exploitative, psychologists shall bear the burden of demonstrating that there has been no exploitation.

9. Keep confidential their professional relationships with patients or clients and disclose client records to others only with written consent except: (i) when a patient or client is a danger to self or others, (ii) as required under § 32.1-127.1:03 of the Code of Virginia, or (iii) as permitted by law for a valid purpose.

* * *

12. Construct, maintain, administer, interpret and report testing and diagnostic services in a manner and for purposes which are appropriate

C. Examples of Reportable Conduct

1. Failure to report known or suspected child abuse. Va. Code § 63.2-1509.
2. Boundary violations, which may include entering into a business relationship with a client, bartering for services in lieu of payment for services, or developing a social relationship with a client. 18 VAC 125-20-150.b.8
3. Engaging in a romantic or sexual relationship with a client or former client, spouse or relative of a client. 18 VAC 125-20-150.b.8
4. Failure to create or maintain therapy records. 18 VAC 125-20-150.b.13
5. Failure to maintain the confidentiality of the therapeutic relationship. 18 VAC 125-20-150.b.9.

D. Examples of Non-Reportable Conduct

1. Billing for frequent or excessive returned phone calls to the client.
2. Charging for last minute cancellations for scheduled appointments.
3. Releasing a minor's treatment records to non-custodial parents.
4. Providing pertinent clinical information and diagnoses to third party payers.
5. Termination of the therapeutic relationship when it is no longer helpful or referring the client to another therapist.
6. Confronting a client about inappropriate behavior.

APPENDIX K

Board of Social Work

A. Statutory and Regulatory Bases for Disciplinary Actions

- Va. Code § 8.01-400.2. Communications between counselors, social workers and psychologists and clients.
- Va. Code § 20-124.6. Access to child's records.
- Va. Code § 32.1-127.1:03. Patient health records privacy.
- Va. Code § 54.1-2400.1. Mental health service providers; duty to protect third parties; immunity.
- Va. Code § 54.1-2400.4. Mental health service providers' duty to inform; immunity; civil penalty.
- Va. Code § 54.1-2403.3. Medical records; ownership; provision of copies.
- Va. Code § 54.1-2406. Treatment records of practitioners.
- Va. Code § 54.1-2400.7. Practitioners treating other practitioners for certain disorders to make reports; immunity from liability.
- Va. Code § 63.2-1509. Physicians, nurses, teachers, etc., to report certain injuries to children; penalty for failure to report.

Regulations Governing the Practice of Social Work – 18 VAC 140-20-10., *et seq.*

B. Provisions of Law Most Commonly Cited as Bases for Board Action

18 VAC 140-20-150. Professional conduct.

Persons licensed as social workers and clinical social workers shall:

* * *

- 2. Be able to justify all service rendered to clients as necessary for diagnostic or therapeutic purposes.

* * *

- 7. Keep confidential their therapeutic relationships with clients and disclose client records to others only with written consent of the client, with the following exceptions: (i) when the client is a danger to self or others; or (ii) as required by law.

* * *

- 9. Not engage in dual relationships with clients, former clients, supervisees,

and supervisors that might compromise the client's, former client's, or supervisee's well-being, impair the social worker's or supervisor's objectivity and professional judgment or increase the risk of exploitation. This includes but is not limited to, such activities as counseling close friends, sexual partners, employees or relatives, and engaging in business relationships with clients. Engaging in sexual intimacies with current clients or supervisees is prohibited.

C. Examples of Reportable Conduct

1. Failure to report known or suspected child abuse. Va. Code § 63.2-1509.
2. Boundary violations which may include entering into a business relationship with a client or bartering for services in lieu of payment for services or developing a social relationship with a client. 18 VAC 140-20-150.9
3. Engaging in a romantic or sexual relationship with a client or former client, spouse or relative of a client. 18 VAC 140-20-150.9
4. Failure to create or maintain therapy records. 18 VAC 140-20-150.10
5. Failure to maintain the confidentiality of the therapeutic relationship. 18 VAC 140-20-150.7

D. Examples of Non-Reportable Conduct

1. Billing for frequent or excessive returned phone calls to the client.
2. Charging for last minute cancellations for scheduled appointments.
3. Releasing a minor's treatment records to non-custodial parents.
4. Providing pertinent clinical information and diagnoses to third party payers.
5. Termination of the therapeutic relationship when it is no longer helpful or referring the client to another therapist.
6. Confronting a client about inappropriate behavior.